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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 93-89

DISPATCHED BY

In the Matter of)

Amendment of Section 25.131)

of the Commission's Rules)

and Regulations to Eliminate the)

Licensing Requirement for Certain)

International Receive-Only)

Earth Stations)

CC Docket No. 93-23 ✓

RM-7931

NOTICE OF PROPOSED RULEMAKING

Adopted: February 11, 1993

Released: March 8, 1993

Comment Date: May 12, 1993

Reply Comment Date: May 27, 1993

By the Commission:

I. INTRODUCTION

1. This Notice of Proposed Rulemaking proposes to eliminate the licensing requirement for most international receive-only earth stations in the fixed-satellite service. Our decision to initiate this proceeding is in response to the Communications Satellite Corporation's (Comsat's) petition to repeal the licensing requirement for receive-only earth stations operating with satellites of the International Telecommunications Satellite Corporation (INTELSAT).¹ Comsat's proposal is consistent with the Commission's ongoing effort to eliminate unnecessary regulation and speed processing. We therefore treat Comsat's pleading as a petition for rulemaking, and incorporate it into this broader proceeding to deregulate most international receive-only earth stations in the fixed-satellite service.

¹ Communications Satellite Corporation, Petition for Repeal and, in the Interim, for Waiver of Section 25.131(j)(1), filed February 20, 1992. Comsat's petition was the subject of two public notices, one (RM-7931) dealing with Comsat's request for repeal of the rule, and the other (File No. ISP-92-004) dealing with its request for a waiver. The Bureau dismissed without prejudice Comsat's waiver request for failure to demonstrate special circumstances that would make strict application of the rule inconsistent with the purposes of the rule. Communications Satellite Corporation, 7 FCC Rcd 4602 (Com. Car. Bur. 1992). Comsat refiled its waiver request (File No. ISP-92-007), narrowing its scope to cover only international receive-only earth stations accessing the INTELSAT K satellite, and providing services similar to INTERNET I. See *infra* note 4. The Bureau granted Comsat's revised waiver request. Communications Satellite Corporation, 7 FCC Rcd 6028 (Com. Car. Bur. 1992), *app. for review pending*.

II. BACKGROUND

A. Existing Policy

2. Pursuant to Section 25.131(j) of the Commission's Rules, the Commission licenses international receive-only earth stations operating with INTELSAT satellites, international separate system satellites, or U.S. domestic and non-U.S. satellites for reception of fixed-satellite services from other countries.² The only receive-only earth stations excepted from this requirement are those used to receive INTELNET I services³ from INTELSAT satellites.⁴

3. Section 25.131(j) was adopted in 1991 as part of a broader rulemaking in which the Part 25 rules were revised, and the licensing requirement for domestic receive-only earth stations was eliminated in favor of a voluntary registration program.⁵ In the Part 25 Order proceeding, the Commission was asked by one of nearly eighty commenting parties to deregulate all international receive-only earth stations as well. The Commission declined this invitation because the comments on the record before it were "insufficient to decide whether and under what conditions current licensing requirements may be relaxed consistent with international obligations."⁶ However, the Commission indicated that further review of this issue may be desirable in a separate proceeding.⁷ We now believe that the time has come to eliminate certain licensing requirements. Therefore, we are initiating this rulemaking and inviting public comments.

B. Comsat's Petition

² 47 C.F.R. § 25.131(j) (1991).

³ INTELNET I service involves the one-way transmission of data to a small, stand-alone, receive-only earth station on a customer's premise.

⁴ See Deregulation of Receive-Only Earth Stations Operating with the INTELSAT Global Communications Satellite System, Declaratory Ruling, RM No. 4845, FCC 86-214 (released May 19, 1986) (Equatorial). In addition, the Bureau recently granted a waiver to permit unlicensed operation of international receive-only earth stations accessing the INTELSAT K satellite, to the extent such reception: (1) involves stand-alone, passive devices not an integral part of any common carrier network; (2) involves direct-to-user applications; (3) involves reception of encrypted video and audio transmissions; and (4) does not infringe on any obligations owed to INTELSAT. See Communications Satellite Corporation, 7 FCC Rcd 6028 (Com. Car. Bur. 1992), app. for review pending.

⁵ Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communications Services, 6 FCC Rcd 2806 (1991) (Part 25 Order).

⁶ Part 25 Order at 2807-08.

⁷ Id.

4. Comsat's petition to repeal Section 25.131(j)(1) states that the underlying concerns expressed in the Part 25 Order for retaining the licensing requirement for international receive-only earth stations no longer exist. In that order, we raised questions about U.S. obligations to INTELSAT and Inmarsat. However, Comsat notes that there is no INTELSAT requirement that receive-only earth stations operating with the system be licensed by member administrations. Comsat states INTELSAT is only concerned about the potential for harmful interference, which inherently is not a factor with receive-only earth stations. In fact, Comsat observes that a number of countries already permit unlicensed receive-only earth stations to access INTELSAT. In addition, Comsat argues that nothing in the Communications Satellite Act of 1962 (Satellite Act), nor the Communications Act of 1934 (Communications Act) precludes the elimination of the current licensing requirement.

5. Five parties support Comsat's petition to repeal the rule, reiterating Comsat's arguments that the licensing requirement is time-consuming, burdensome, not required by INTELSAT or any U.S. statutes, and no longer appears to serve any useful public interest purpose.⁸ Three parties oppose the petition to some degree, arguing Comsat has failed to justify an immediate repeal of Section 25.131(j)(1). However, all of the opposing parties support, in general, the initiation of a rulemaking to address the issues raised by Comsat's petition.⁹

III. DISCUSSION

6. The Commission already has eliminated the licensing requirement for domestic receive-only earth stations in the fixed-satellite service, substituting a voluntary registration program in its place. These changes were prompted by the increasing competition in the satellite industry, the resulting stimulation of new and increased services, and the Commission's desire to prevent the benefits of this competition from being frustrated by delays in authorizing earth station facilities and by imposing unnecessary burdens on applicants.¹⁰ To date, the Commission's experience with deregulation of domestic receive-only earth stations has been positive.

⁸ The parties supporting Comsat's proposal are Scientific-Atlanta, SSE Technologies Inc. (SSE), Andrew Corporation (an informal letter), Brightstar Communications, Ltd. (Brightstar), and IDB Communications Group, Inc. (IDB).

⁹ The parties expressing some form of opposition to Comsat's petition are GE American Communications, Inc. (GE American), Pan American Satellite (PanAmSat), and GTE Spacenet Corporation (GTE).

¹⁰ Amendment of Part 25 of the Commission's Rules and Regulations to Reduce Alien Carrier Interference Between Fixed-Satellites at Reduced Orbital Spacings and to Revise Application Processing Procedures for Satellite Communication Services, Notice of Proposed Rulemaking, 2 FCC Rcd 762, 767 (1987); see also Deregulation of Domestic Receive-Only Satellite Earth Stations, 104 FCC 2d 348 (1986); Regulation of Domestic Receive-Only Satellite Earth Stations, 74 FCC 2d 205 (1979).

7. However, the Commission has declined to eliminate the licensing requirement for international receive-only earth stations, other than those used to provide INTELNET I service, due to concerns about U.S. obligations to INTELSAT and Inmarsat. Due to changes in the international satellite arena, as confirmed by the record generated by Comsat's petition, we now believe there is no longer a basis for these concerns. We also note that the same factors which prompted us to eliminate the licensing requirements for domestic receive-only earth stations are also prevalent in the international satellite market place. We therefore tentatively conclude that the time has come to remove the licensing requirement for international receive-only earth stations in the fixed-satellite service.

8. Earth Stations Accessing the INTELSAT System. INTELSAT is introducing various small antenna services. For instance, the high power and large coverage area of the INTELSAT K satellite permit the downsizing of receive-only earth stations to such small dimensions that it is now economically feasible to transmit international video and audio programming directly to user locations that potentially number in the thousands. Administration of a licensing program for these stations would be burdensome and possibly hinder the rapid introduction of these new services. Therefore, we believe that elimination of the licensing requirement would be in the public interest. In support, Comsat states that the concerns it expressed in our Equatorial proceeding concerning across-the-board deregulation of international receive-only earth stations no longer exist.¹¹ There is no INTELSAT requirement that receive-only earth stations operating with the system be licensed by member administrations. Indeed, it appears a number of foreign countries, including members of the European Community, already permit unlicensed receive-only earth stations to access INTELSAT.¹² Therefore, we believe deregulating international receive-only earth stations would not violate any U.S. obligations to INTELSAT or Inmarsat. In addition, we have already found that International Telecommunications Union (ITU) radio regulations do not require us to license INTELNET I receive-only stations.¹³

9. We also tentatively conclude there is nothing in the Satellite Act or the Communications Act that precludes the elimination of the current licensing requirement. This issue was first addressed in the 1986 Equatorial ruling. There, the Commission concluded that receive-only INTELNET I earth stations are not subject to the licensing restrictions of the Satellite Act. Although we found Section 201(c) (7) of the Satellite Act requires licensing of "satellite terminal stations" to Comsat and common carriers, we concluded that INTELNET I receive-

¹¹ As the U.S. Signatory to INTELSAT, Comsat is responsible for ensuring that operators accessing this system comply with the pertinent rules and standards of the INTELSAT organization. In Equatorial, Comsat asserted that total deregulation of international receive-only earth stations could be inconsistent with the INTELSAT Agreement, which considers the earth stations used with the global satellite system as part of that system, or with INTELSAT charging policies. Equatorial, at p. 5, n. 9.

¹² See Comsat Petition at p. 4.

¹³ See Equatorial, at p. 11, para. 17.

only earth stations are not "satellite terminal stations" since they are not connected to the domestic common carrier network and used to provide U.S. common carrier services.¹⁴ Further, we found that earth station licensing is controlled by Title III of the Communications Act, not Section 201(c)(7).¹⁵

10. The Commission also concluded in Equatorial that, since receive-only earth stations are "passive device[s]," they "do not raise the regulatory concerns that [Title III] licensing was intended to control, i.e., the conservation of spectrum and the prevention of harmful interference."¹⁶ Finally, the Commission determined that Section 705 of the Communications Act, 47 U.S.C. § 605, gave it ample authority to meet its obligation under the ITU Radio Regulations to prevent the unauthorized reception of radio signals.¹⁷ For all these reasons, the Commission concluded that it could, and should, deregulate INTELNET I receive-only earth stations.

11. Although the Equatorial ruling was limited to INTELNET I earth stations, we believe the same reasoning applies with respect to most other receive-only earth stations accessing INTELSAT. These stations also are "passive devices" that do not cause problems with respect to spectrum conservation or harmful interference. Further, Section 705 of the Communications Act is just as applicable to other types of international receive-only earth stations as it is to INTELNET I earth stations. Finally, such earth stations generally are not an integral part of any domestic common carrier system (and, thus, are not subject to Section 201(c)(7) of the Satellite Act). Accordingly, we tentatively conclude that there is no legal impediment preventing adoption of a non-licensing approach for international receive-only earth stations operating with INTELSAT, other than those operationally connected to a domestic common carrier system. However, for those receive-only earth stations which are operationally connected with a domestic common carrier system and used to exchange the carrier's common carrier traffic with the INTELSAT satellite system, we tentatively conclude that Section 201(c)(7) of the Satellite Act precludes us from totally deregulating them, and that these stations would still be required to obtain appropriate authorization. We request comment on these tentative conclusions.

12. There are also compelling policy reasons to deregulate international

¹⁴ In a later proceeding, the Commission further found that an earth station would not be a "satellite terminal station" if it was merely connected to a domestic common carrier; the earth station must also be "operationally connected," (i.e. an integral part of the carrier's network), and be used to exchange the carrier's common carrier traffic with the INTELSAT satellite system. See Licensing Under Title III of Private Transmit/Receive Earth Stations Operating with the Intelsat Global Communications Satellite System, 3 FCC Rcd 1585, 1586 (1988) (Reuters), aff'd TRT Telecommunications Corp. v. F.C.C., 876 F.2d 134 (D.C. Cir. 1989).

¹⁵ Equatorial at 10 (¶¶ 15-16).

¹⁶ Id. at 10-11 (¶ 16).

¹⁷ Id. at 11-12 (¶ 17).

receive-only earth stations operating with the INTELSAT system. As INTELSAT's service capabilities have developed (for example, with the high-powered INTELSAT K), new opportunities have arisen for Comsat's customers to access the INTELSAT system using receive-only earth stations. It would be unreasonable to expect U.S. customers to undergo the burdensome process of individually licensing receive-only earth stations for use with the INTELSAT system when such licensing serves no legitimate purpose. Moreover, the administration of such a licensing program would place unnecessary strain on the Commission's already scarce resources. Modifying Section 25.131(j) would thus further Commission policies and serve the public interest by increasing service options, reducing customer cost, promoting the rapid introduction of service and freeing up Commission resources for other purposes. This proposal would also eliminate unnecessary regulations that impair growth and burden the U.S. economy.

13. Earth Stations Accessing Non-INTELSAT Satellites. IDB and PanAmSat propose that we deregulate receive-only earth stations operating with non-INTELSAT satellites as well. We agree with this proposal to the extent noted below. Most of the reasons stated above for deregulating receive-only earth stations operating with INTELSAT satellites also apply to those stations operating with non-INTELSAT satellites. These earth stations do not require licensing under Title III, and Section 705 of the Communications Act gives this Commission the authority to prevent unauthorized reception of radio signals if necessary. Comsat also supports deregulation of these earth stations. The only difference between deregulating these earth stations versus INTELSAT receive-only earth stations, is that the United States is obligated under Article XIV(d) of the INTELSAT Agreement to engage in technical and economic consultations with INTELSAT before we authorize space segment facilities separate from INTELSAT to be used to satisfy international telecommunications services requirements.¹⁸ Therefore, deregulated receive-only earth stations may only be operated with non-INTELSAT satellites for which the United States has completed the consultation process with INTELSAT. Operation of receive-only earth stations with non-consulted space stations will not be permitted. However, operators may request the Commission to initiate consultation for such space stations and the Commission will issue a public notice if and when such consultation is completed. We request comment on this approach and invite any alternative proposals to ensure satisfaction of U.S. obligations. In addition, GTE has raised a question as to whether deregulation is appropriate for receive-only earth stations used to provide transborder services. We tentatively conclude that it is and request comment on this.

14. Registration. IDB submits that international receive-only earth

¹⁸ We note that INTELSAT recently relaxed its procedures for economic harm assessment of separate systems: (1) no economic harm assessment will be required for separate systems providing services not connected to the public switched network (PSN); and (2) a presumption of no economic harm will be made for systems carrying no more than 1250 64 kbs circuits per satellite connected with the PSN. See INTELSAT 18th Assembly of Parties, Record of Decisions, November 3-6, 1992. It appears INTELSAT is moving towards eventual elimination of the consultation requirement, which action would significantly alleviate our concerns about satisfying U.S. obligations under Article XIV(d) of the INTELSAT Agreement.

stations should be eligible for registration for operations where fixed-satellite service downlinks share frequency bands with other services (e.g., C-band and a portion of the international Ku-band). IDB states this voluntary registration would afford the same protection from interference as a license.

15. We propose to establish a streamlined registration program, similar to that used for domestic receive-only earth stations.¹⁹ We are not convinced, however, that the exact registration program used for domestic receive-only earth stations would be the least burdensome method of affording interference protection to those that desire it in this context. Therefore, we propose the following modified registration program. Applicants desiring registration would first complete frequency coordination, then submit an application to the Commission on FCC Form 493 with the appropriate fee (\$230), and a certification that coordination had been completed. The Commission would assign the application a file number, place it on public notice as accepted for filing, and the station would be automatically authorized 30 days after notice if no objections are received. A public notice would be issued confirming the grant. If an objection is received within 30 days, the application would not be automatically granted, and would be subject to further public notices informing the public of its status. Further, we propose not to assign call signs; instead the file number will be the sole reference to the station. We also propose a ten year registration period with an option for renewal. Finally, we propose that applications need not be filed for assignments, transfers or modifications to a registration, which is not a license under Title III. The Commission should be notified simply by letter of any changes to the registration, including cessation of operations. We invite comments on this proposal.

16. We also invite commenters to propose alternative methods of giving receive-only earth station owners interference protection. We recognize that our public notices identifying those desiring interference protection are essential to frequency coordinators in order to update their databases. Therefore, proposals should take this into account.²⁰

17. Scope of Deregulation. We also propose that, apart from the exception noted above for earth stations accessing INTELSAT that are operationally

¹⁹ However, we do not propose allowing the registration of mobile receive-only earth stations. Because these stations are operated while moving, and not from fixed locations, the normal frequency coordination process used for fixed stations would not work. Further, the Commission has not established a channelization plan for these stations to prevent interference, such as is used for cellular systems. Therefore, we do not believe frequency protection can be afforded these stations, making the registration process inapplicable.

²⁰ We also note regarding international frequency coordination, the Commission has another rulemaking at this time which deals with registration with the International Frequency Registration Board (IFRB). Notice of Proposed Rulemaking, 7 FCC Rcd 5066 (1992). Comments addressing international frequency protection should also take into consideration the actions proposed in that proceeding.

connected to a domestic common carrier system, our deregulation of international receive-only earth stations apply across the board to all such stations operating in the fixed-satellite service, whether these earth stations are used at fixed locations, or used in motion on aircraft or any other transportable platform. We do not believe there are any legal impediments to such a broad deregulation, and such deregulation would promote the most flexibility in the use of the frequency band and will not detract from its primary use. We invite comments on these proposals.

IV. CONCLUSION

18. In this Notice, we tentatively conclude that the public interest requires that we remove the licensing requirement of Section 25.131(j) for most international receive-only earth stations in the fixed-satellite service. Therefore, we propose to amend Section 25.131(j) to remove the licensing requirement for all international receive-only earth stations in the fixed-satellite service, except those that are "satellite terminal stations" (i.e. operationally connected with a domestic common carrier system and used to exchange the carrier's common carrier traffic with the INTELSAT satellite system), which stations are governed by Section 201(c)(7) of the Satellite Act.²¹ Further, we propose to establish a voluntary registration process for those international receive-only earth stations which require frequency protection, although we request comment on alternative methods. We request comments on the issues and proposals addressed in this Notice and encourage full participation of domestic and international satellite and earth station operators and users.

19. As required by Section 603 of the Regulatory Flexibility Act, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth in Appendix A, Section II. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice (see Appendix A, Section III), but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96-354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1980).

V. ORDERING CLAUSES

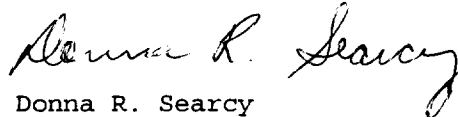
20. Accordingly, IT IS ORDERED that NOTICE IS HEREBY GIVEN of the proposed regulatory action described above, and that COMMENT IS SOUGHT on the proposals in this Notice and in Appendix B.

²¹ Removal of the licensing requirement does not affect other potential constraints that may be imposed by U.S. law. For example, in addition to the requirements of consultation imposed by the INTELSAT Agreement, there may be other constraints imposed such as copyright laws.

21. This action is taken pursuant to Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and Section 201(c) of the Communications Satellite Act of 1962, 47 U.S.C. § 721(c).

22. For further information on this Notice contact Michael J. Pollak, Senior Engineer, Common Carrier Bureau, (202) 632-7834 and Troy F. Tanner, Attorney, Common Carrier Bureau, (202) 632-7265.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in cursive script, reading "Donna R. Searcy".

Donna R. Searcy
Secretary

APPENDIX A
Procedural Matters

I. Ex Parte Rules - Non-Restricted Proceeding

This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. See generally 47 C.F.R. Sections 1.1202, 1.1203, and 1.1206(a).

II. Initial Regulatory Flexibility Act

A. Reason for Action

This rulemaking proceeding is initiated to obtain comment regarding proposed elimination of the Commission's licensing requirement for most international receive-only earth stations in the fixed-satellite service.

B. Objectives

The Commission seeks to remove unnecessary regulations, and thereby stimulate growth in the international satellite market.

C. Legal Basis

The proposed action is authorized under Sections 4 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154, 303(r), and Section 201 of the Communications Satellite Act of 1962, 47 U.S.C. § 721.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed registration program is voluntary, and less burdensome than the current licensing procedures. Therefore, the new reporting or recordkeeping requirements of the proposed rules will not create additional burdens on the public.

E. Federal Rules That Overlap, Duplicate or Conflict With These Rules

None.

F. Description, Potential Impact, and Number of Small Entities Involved

The proposals discussed in this Notice of Proposed Rulemaking primarily will reduce regulatory requirements on the small businesses and the public at large who utilize receive-only earth stations for their own use. The licensing requirement will remain the same for those earth station owners that plan on operationally connecting their earth stations with a domestic common carrier network and using it to exchange the carrier's common carrier traffic with the INTELSAT satellite system.

G. Any Significant Alternatives Minimizing the Impact on Small Entities Consistent with the Stated Objectives

The Notice solicits comment on a variety of alternatives to achieve Commission objectives.

III. Comment Dates

Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's Rules, 47 C.F.R. Sections 1.415 and 1.419, interested parties may file comments on or before May 12, 1993 and reply comments on or before May 27, 1993. To file formally in this proceeding, you must file an original and four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. You should send comments and reply comments to: Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M St., N.W., Washington, D.C. 20554.

APPENDIX B
Proposed Amendment to Rule

Part 25 of the Commission's Rules and Regulations (Chapter I of Title 47 of the Code of Federal Regulations) is proposed to be amended to read as follows:

1. The authority citation for Part 25 continues to read:

AUTHORITY: Sections 101-404, 76 Stat. 419-427; 47 U.S.C. 701-744, Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interprets or applies sec. 303, 48 Stat. 1082, as amended; 47 U.S.C. 303.

2. Section 25.131 is amended by revising paragraphs (b), (i), (j), and (k) as follows:

(b) Except as provided in paragraph (j) and (k) of this section, receive-only earth stations in the international and domestic fixed-satellite service may be registered with the Commission in order to protect them from interference from terrestrial microwave stations in bands shared co-equally with the fixed service in accordance with the procedures of §§ 25.203 and 25.251-25.256.

(i) Applications for modification of license or registration of receive-only earth stations shall be made in conformance with § 25.117 of this part, except that the owner/operator shall notify the Commission by letter of modifications to registrations for international receive-only earth stations which do not require new frequency coordination. Both Domestic and International Registrants are required to notify the Commission when a receive-only earth station is no longer operational or when it has not been used to provide any service during any 6 month period.

(j) Receive-only earth stations operating with INTELSAT space stations for reception of services from other countries do not need to be licensed, except for receive-only earth stations operationally connected with a domestic common carrier and used to exchange the carrier's common carrier traffic with the INTELSAT satellite system, which stations do require licenses. Applications for license shall be filed on FCC Form 493.

(k) Receive-only earth stations operating with international space stations or U.S. domestic and non-U.S. space stations for reception of services from other countries do not need to be licensed but are permitted to operate only with space stations for which that the United States has completed the consultation process with INTELSAT. Operation of receive-only earth stations with non-consulted space stations is not permitted. Operators may request the Commission to initiate consultation for such space stations and the Commission will issue a public notice if and when such consultation is completed.